THE MONTGOMERY TRIBUNE.

VOL IX. MONTGOMERY CITY, MISSOURI, FRIDAY, APRIL 5, 1901. NO. 25

Final Settlement.

Notice is hereby given that I will, as administrator of the estate of

CHARLES CABRELL, deceased.

Make final settlement of said estate at the next April term of the Probate court of Montgomery county, state of Missouri, at the City of Montgomery, said term os court beginning on the 5d Mondey in April, 1901

3-16-5t. B. S. BAKER, Adm'r.

Administrator's Sale.

By virtue of an order of the Probate court o Montgomery county, Missouri, I, the undersigned administrator of the estate of Hugh McClure, deceased, will sell at public auction, at the court house door, in the City of Montgomery, on

MONDAY, May 6th, 1901.

between the hours of 9 o'clock a m. and 4 o'clock p m., during a sessi n of the circuit court of said Montgomery county, all the right, title and in erest, of the said Hugh McClure, in the following described real estate in Montgomery county, Missouri, to-wit:

37.67 acres the south part of the west half of the southwest quarter, and 61.26 acres, the south part of the east half of the southwest quarter all in section sixteen, township forty-nine, range four, west, and 12.40 acres in the north half of the southeast fourth of section thirty-two, township fifty, range four, west, being the same tract of land designated as lot number five in the report of the commissioners in partition, in the cause of John P. Rodgers, et al, exparte petitioners for the partition of the land of Parker Rodgers, deceased, which said report is recorded in Book G, at page 430, in the records in the office of the circuit clerk of Montgomery county, Missouri.

The interest of said Hugh McClure in said real estate, being an undivided one-third interest, subject to a life estate in his father, George H. McClure.

I will sell said real estate upon the following terms, to-wit: One half cash, the balance upon a credit of nine mon hs, deferred pa ment to bear interest at the rate of six per cent per annum from date of sale and be secured by trust deed on the premises sold, the purchaser to have the privileg of paying the entire purchase price in cash. JOSEPH M. CATER,

A. W. LAFFERTY, Att'y. Admr.

March 29, 1901-4w.

Trustee's Sale.

Whereas, Mary Lydia Yore, a single person, did by her certain deed o trust, dated February 5, 1900, and recorded March 8, 1900, in mortgage book 51, page 84 to 86, in the office of the Recorder of Deeds of Montgomery county, Missouri, convey to Thomas E. Moroney, trustee, the following described real estate lying and being in the county of Montgomery and State of Missouri, to-wit:

All of the west half of lot eight (8) in block two (2) in the town of Danville, said lot lies north of Main street.

Which said conveyance was made to secure certain promissory notes in said deed described And whereas, Mary Lydia Yore, having defaulted in the payment of said note and interest thereon, now, therefore, at the request of the legal holder of said note, the trustee, Thomas E. Moroney, therein named, refusing to act as such, I, Charles M Wilson, Sheriff of Montgomery county, Missouri, will, in pursuance of the provisions of said deed of trust, sell on

SATURDAY, April 20, 1901,

At the court house door, in the city of Danville, county of Montgomery, and State of Missouri, between the hours of nine o'clock in the forenoon and five o'clock in the afternoon of that day, at public vendue to the highest bidder for cash, the above described real estate to satisfy said note and interest thereon, together with the cost of executing this trust

CHARLES M. WILSON, Sheriff of Montgomery county, Mo.

March 29 1901,-4t.

Stopping the Paper.

Last week a subscriber came in to renew his paper, and asked why we did not stop his paper when his time was out. "Do you not want to get it another year?" was asked. He replied, "Yes, but you could have stopped it first and then started it again when I subscribed."

Occasionally the argument is met and it is hard to get over or around. So many of the Statesman's friends ask us to wait till they come to town, or till they sell their hogs or hay, or till they get the money, we actually believe it is an accommodation to most of our readers to wait till they notify us before stopping their paper. In a few cases we lose the price of a year's subscription, while trying to accommodate our friends. Now, and then, one who promised to pay soon, either dies or move away or discovers that he "never signed for the paper no how," and then lose. But there ore so many good substantial people who pay for what they get, we soon forget the scoundrels who beat us because we trusted them.

If asked to to discontinue a supsciption when it has expired, we do so cheerfully; but if the reader continues to take it out and uses it six or eight months and then requests it to be stopped, we are not so cheerful, unless it is paid to date.

No subscriber can plead ignorance as to the time to which his paper is paid, because the date is printed with his name upon the margin or wrapper of the paper. It is there for his benefit as well as ours. Truth is, there is fame and fortune for the man who will devise a plan for stopping the paper of the fellow who wants it stopped, for continuing the paper to the one that wants it continued, and for shaking the subscription price from the pockets of those who willfully take advantage of the editor and reiuse to pay for the paper.—Columbia Statesman.

THE COUNTY SEAT QUESTION.

THE SUPREME COURT'S DECISION IN THE MATTER.

In the Supreme Court of Missouri. In Banc. October Term, 1901.

State ex rel. E. P. Davis, et al. Relators, vs. J. Henry White, et. al., Respondents. } 10436.

Original Mandamus.

At the general election in November, 1900, a proposition to remove the county seat from Danville to Montgomery City was submitted to the voters of Montgomery County. At that election there were 4002 votes cast for the candidates for national and state officers, 2111 votes cast in favor of the removal of the county seat and 782 against that proposition.

In due time the county court canvassed the vote and declared the proposition to remove carried, appointed commissioners who selected the site, which was duly approved, a deed to the same was made out and accepted, and the county court assigned rooms in the building for the county officers respectively.

The object of this suit is to require the county court to annul its proceedings in this matter, declares the proposition to remove not carried and require the respondents composing the county court to retain the county seat at Danville. There is no dispute as to the facts.

From the record it appears that more than two thirds of those who voted on the proposition to remove voted in favor of it, but it does not appear that two thirds of the legal voters of the county voted for the removal. The sole question for our consideration is did the vote authorize the removal.

The language of the statute is: "If it shall appear by such election that two thirds of the legal voters of said county are in favor of the removal of the county seat of such county, then the county court shall appoint five commissioners to select a site whereon to locate the seat of justice. "R. S. 1899 Sec. 6 40.

This section appeared in the General Statutes of 1865, p. 253, except that for "legal voters" as it now is, it was "legaly registered voters."

At that time the law required registration as a prerequisite to the right to vote. In 1879 the general requirement of registration having been eliminated this statute was revised into the form in which we now have it, specifying only "legal voters of said county"

The principle involved in this case has several times received the consideration of this court. As early as 1864 a similar question arose on the construction of an act of 1857, which authorised the City of St. Louis to license persons to keep open refreshment booths on Sunday "whenever a majority of the legal voters" should authorize it.

The proposition has been submitted at an election when city officers were elected and at which more than 13000 votes had been cast for candidates for city offices 5035 votes were for and 2601 against the proposition. The court held that the proper construction of the statute required a majority "of all the legal voters of the city" and not merely those voting on the proposition, and the license to keep the establishment open on Sunday attempted to be granted by the city to defendant founded on the assumption that the proposition had carried, was invalid. State V Winkelmeier 25 Mo. 102. Very shortly afterwards a similar case came before the court wherein the defendant claimed to hold a license of like character based on the same election, and it was held that his license was valid. State V Binder, 38 Mo 450. But in the last named case the record did not show how many votes had been cast for the candidates for office, it only showed the vote on the proposition. The court therefore, unless it had taken cognizance of a fact outside the record in the case before it, had no information except as to the vote on the proposition. In the opinion it is said:

"An election was held, accordingly, on the day named, the result of which as was it appeared by the returns of the city register (a certified copy of which was given in evidence) that the whole number of votes cast at said election was seven thousand and eighty five, of which five thousand and fifty one were given in the affirmative and two thousand and thirty four in the negative of the proposition. This was the whole evidence concerning the election and vote." That case, therefore, cannot be considered as at all in conflict with State V winkelmeier.

In State ex rel v Sutterfield, 54 Mo. No. 391, the court construed statute involved in the case now under consideration, as it was in 1865, when it required the assent of two thirds of "all legally registered voters." At the election in that case 547 votes for candidates had been cast, 244 for and 47 against removing the county seat. It was also shown that there were 694 names on the registration list at that time. At that time the constitution ordained that "The General Assembly shall vote in favor of such removal." The court said: "The words do not imply an acquiescence of a negative sanction or a negative assent inferred from absence, but a positive vote in the affirmative. The statute in this case uses the words "legally registered voters," and requires two thirds of them to vote for the change"

In State v Brassfield, 67 Mo. 331, it was held that the clause of the constitution sec. 14 Art. 11, 1875, which declared that "the General Assembly shall not authorize any county, city or town to become a stockholder in any corporation unless two thirds of the qualified voters of such county city or town, at a regular or special election to be held therein, assent thereto" meant all the legal votres in the county, city or town and not merely all who voted. And it may be said that all the utterances of this court that bear on this question are to the same effect. State v Mayor, 78 Mo 437; State v Francis 95 Mo. State V McCowan, 128 No. 197.

It will be noticed that the two cases last above quoted from turned chiefly upon the construction given the clause of the constitution in question in each case, although the statute then in question was also a subject o construction. In each instance the general form of expression in the constitution was to place a restriction on a power existing, whilst that of the statute was to confer a power: the requirement of the constitution was that the act shall not be done "unless" etc., while the provisions of the statute was that it may be done, "if" etc., the Statute's permission being intended to be within the limits of the constitution's restriction. In the Sutterfield case the constitution had forbidden the removal unless two thirds of the qualified voters has assented thereto and the statute had declared that the removal might be effected if two thirds of the "legally registered voters" had assented; the court said that the constitution was not satisfied with two thirds of those voting, but required two thirds of all in the county entitled to vote.

And in the Brassfield case when the legislature had undertaken to say that the affirmative vote of two thirds of those voting would authorize the stock subscription in the fact of the constitution; which ordained that it should not be done until two-thirds of the qualified voters had given their assent, the court said that the act of the legislature was invalid In the Brassfield case the constitution had said that the act should not be done unless a certain proposition of the voters of the county assented thereto while the legislature had said that it might be done if a less proportion assented. Now in the case at bar the constitution has said that the act shall not be done unless a certain proportion of the voters of the county approve it, and the legislature has said it may be done if a greater proportion than that named by the constitution approve it. The constitution is satisfied if two-thirds of those voting at the election on the proposition approve it, but the legislature does not give its consent until two-thirds of all the legal votars in the county approve it. This change was brought about by the constitution of 1875. "The General Assembly shall have no power to remove the county seat of any county, but the removal of the county seat shall be provided for by general law: and no county seat shall be removed unless two-thirds of the qualified voters of the county voting on the proposition at a general election vote therefor;" Art. IX, sec. 2 1875

It is argued by the learned counsel for respondents that the subject of this change in the constitution was to change the rule laid down by court in the Sutterfield case. The rule laid down in that case was not a declaration of any principle of law but merely an interpretation of words employed in the constitution and the statute. It was there said that When the words "qualified voters of the county" were used they meant all those in the county who were entitled to vote and not merely those who voted on the question. If the framers of the constitution of 1875 had intended to change the law of the state on respect of interpretation of such words from that which this court had uniformly put upon them, they would have said in effect that such words thereafter occurring in the written law should be construed as indicated. But instead of that they effected a change in the law, not by repealing the former words and requiring for them a new interpretation, but by adding other words to them so as to materially change their meaning. The constitution no longer now forbids the removal of the county seat unless two-thirds of all those in the county having the right to vote give their votes in favor of the removal, but only forbids it until it receives the approval of two-thirds of those qualified voters who take enough interest in the matter to express their opinions at the polls. But the language of the constitution is still in the form of a restriction on the power of the legislature. It does not undertake to confer upon the county court or the people of the county the power to remove their county seat, nor does it confer that power on the General Assembly If the constitution was silent on the subject the General Assembly would be absolute in its power: that power the constitution silently recognizes and merely puts limitations upon it, these limitations are that such removals shall be effected only in pursuance of a general law and not in any instance unless with the approval of two-thirds of those voting on the proposition. Therefore the General Assembly cannot by its own act remove a county seat nor can it pass a special law for the removal of the county seat of Montgomery county, nor authorizes the removal with less than two-thirds or the qualified voters of the county voting on the proposition, assenting; but in all other respects the subject is within the descretion of the legislature which can if it sees fit require a larger proportion of the voters to give their approval than the minimum limit prescribed by the constitution. The words in our statute of to-day "two-thirds of the legal voters of said county" means just what the corresponding words in the former statutes were construed to mean in State vs. Sutterfield, supra, and State vs Brassfield. The General Assembly has not seen fist since the adoption of the consititution of 1875 to make any change in the requirement in this respect, and we can make none.

The constitution of Colorado is in the particular feature we are now discussing exactly like ours except that it forbids the removal unless a majority of the voters assent. The legislature in that state passed an act requiring the assent of two-thirds of the voters to a removal of a county seat. It was contended that the act of the legislature was invalid. The Colorado court in an able opinion by Beck, C. J. held the except as restricted by the constitution the will of the legislature was supreme in the matter, drawing the distinction between the powers of congress conferred by the federal constitution and the inherent powers of a state legislature, said that court:" There would be great force in the arguments to demonstrate the invalidity of the law of 1881, if the state constitution, like the national constitution, was a grant of enumerated powers.

In such cases we would look into the constitution to see if the grant was broad enough to authorize the legislature to declare what vote should be necessary to remove a county seat. But the legislature being invested with complete power for all the purposes of civil government and the state constitution being merely a limitation upon that power, we look into it not to see if the enactment in question is authorized, but only to see if the enactment in question is authorized, but only to see if it is prohibited. "Then after showing that the legislature could not cross the bounds of restriction the court said:" It would seem on principle, however, that above and beyond or outside, the minimum limit the jurisdiction would be unrestrained. This being so, the legislature would be as free to exercise its power and descretion in the unlimited jurisdiction as if no minimum limit on its powers had been imposed." And so the court held that notwithstanding the constitution said that the removal should not take place unless a majority of the qualified electors of the county voting on the proposition at a general election, vote therefor," the act of the legislature governed the case which declared "that not less than than two-thirds of all the legal votes cast shall be necessary to effect the removal."

It may be that in the sometimes hurried course of revision the language of our statute as we now have it has been repeated in the several revisions since the adoption of our present constitution without very close attention to the change of terms from the old to the new constitution, but a court cannot take such a hypothesis into account. We must take the law as it is written and assume that it expresses the deliberate mind of the law maker.

We are not indifferent to the arguments of the importance of this question to the people of Montgomery county and the inconvenience that will attend the annulling of the Act of the county court essaying to remove the county seat from Danville, but a court has no right to allow such considerations to influence its judgment.

While the statute remains as it is the county seat cannot be removed until two-thirds of the qualified voters of the county signify their assent thereto at a general election; that they have not yet done. The general election in 1900 shewed that there were 4002 qualified voters in the county. It would therefore have required the affirmative vote of 2668 of them to have effected the proposed removal. If two-thirds of the voters of that county favor the removal they have not taken sufficient interest in the matter to give effect to their prefrence

We do not perceive anything in the case to justify a refusal of the writ on the ground of laches in the relators, they have moved that as much expedition as could be expected.

The peremptory writ of mandamus is awarded. Robinson, Brace and Gantt, J J. Concur, Burgess C. J., and Sherwood, J. dissent. Marshall, J. absent.

LEORY B. VALLIANT, J

MRS. NATION'S PAPER.

Topeka, Kas., March 10.—The initial edition of Mrs. Carrie Nation's newspaper, The Smasher's Mail, is interesting. It is a four-column, sixteen-page paper of neat appearance, containing several half-tone illustrations of various scenes during the late joint crusade. Mrs. Nation says in her salutatory:

"I have no apologies to make in having Nick Chiles for the publisher of the Smasher's Mail. Our Savior ate with publicans and sinner to do them good. The servant is not above his Lord. This paper shall be as its name implies, The Smasher's Mail. I shall put into the colums letters I got from all over, even those I get from across the waters. Those wishing to say anything through the colums of The Smasher's Mail must put it in the form of a letter and use brevity and soul of wit, for I reserve the exclusive right as editor. I have had a severe lesson in Peoria from allowing some one else to attend to what I ought to, therfore, I alone am responsible for what goes in."

On the fourteenth page is found a picture of Nick Chiles, the negro publisher. Underneath are the lines, "Busines manager of The Smasher's Mail and Plaindealer, who went to the relief of Mrs. Nation when deserted by the law ard order people.

The first page contains an excellent half-tone of Mrs. Nation. The departments under which the letters are published in The Smasher's Mail are "Letters from Hell," "Letters from Honest People," "Appeals for Help," "Some Poetry," "Notes and Comments," "Indorsements and Invitations," "Snapshots" and "Answers to Corespondents."

Some of the paragraphs in the paper are:

"We solicit advertisements of all that is useful and beautiful, and that its use will be to the glory of God."

"Why didn't the Legislature pass a law prohibiting prisoners the use of tobacco, whiskey, or play cards in jail? Why build again the things which they destroy?"

"I was glad to notice that anarchy was not indorsed by McFarland and Sheldon."

"You want to be in the band wagon with the preacher and the good woman. Verily, I say unto you, Mr. Lindsey, you must be born again."

"In justice to Mr. Cook and family, I will say my confinement was most pleasant if it had not been for the cigarett smoke. I had three meals a day and a good bed. It is a first-class hotel beside the Wichita jailhouse, with its manuiaca, cigaretts and green persimmons. Turnkey, Mr. Dodd, was kind to me."

City Election.

The city election passed off quietly here Tuesday. Three tickets were in the field—Non-Partisan, Democratic and Citizens. The Citizens ticket, however was all democratic but did not receive many votes.

J. O. Basket received for city clerk 160 votes. Col. L. A. Thompson was elected last spring by the council for two years. As to whether or not Basket can dispossess Thompson of the office there is a difference of opinion. Will Hughes was elected city attorney, there being no opposition. The vote by wards was as follows:

FOR STREET COMMISSIONER.

	1st W	2d W.	Total
Geo. Riddle, D	69	73	153
J. O'Donnell, N. P.	53	73	126
Riddle's majority			7

1st Ward—For Aldermen.

C. R. Ball, D	65
L. A. Kirn, N. P.	60
Ball's majority	5

2d Ward—For Alderman,

R. C. Brown, D.	86
G. B. Burton, N. P.	70
Brown's majority	16
Rob't Sharp, D,	87
W. L. Owens, N. P,	67
Sharp's majority	18

SCHOOL ELECTION.

The vote on the school propositions and on directors in the city resulted as follows:

For proposition to increase the rate of taxation for school purposes in the district to the total rate of eighty-five cents on the one hundred dollars valuation.

1st Ward—Yes, 93. No. 33. Maj 60
2d Ward—Yes, 143. No. 9. " 134

For proposition to levy an annual tax for the purpose of erecting, repairing and furnishing school buildings in the district at the rate of five cents on the one hundred dollars valuation.

1st Ward—Yes, 99. No. 27. Maj. 72
2d Ward—Yes, 144. No. 8. " 136

For proposition to levy an annual tax for the purpose of providing a sinking fund and for the payment of the annual interest on bonded debt of district, of twenty cents on the one hundred dollars valuation.

1st Ward—Yes, 101. No. 25. Maj. 76
2d Ward—Yes, 145. No. 7. " 138

For the proposition to increase the school term for the ensuing scholastic year to the total period of eight months.

1st Ward—Yes, 100. No. 26. Maj 74
2d Ward—Yes, 145. No. 8. " 137

FOR SCHOOL COMMISSIONER.

John W. Davis,
1st Ward 107. 2d Ward 146. Tot' 253
J. W. Dunlap,
1st Ward 14. 2d Ward 8. Total 22

FOR SCHOOL DIRECTORS.

	1st Ward	2d Ward.	Total.
G. E. Muns,	56	88	144
L. C. Gove,	50	80	130
W. L. Gupton	75	75	150
W. A. Crockett	70	85	152

Gupton's majority over Muns, 6; Crockett's majority over Gove, 22.

The new school board when reorganized will stand as follows:

Milton Jones, D., W. B. M. Cook, D., W. L. Gupton, D., W. A. Crockett, D., R. G. Williams, D., D. W. Major, R.

Hunt For Errors In Magazines.

Editorial vigilance is the only safeguard against errors in magazine-making. Every article that is published in The Ladies' Home Journal, for instance, is read at least four times in manuscript form and all statements of fact verified before it goes to the printer. Then it is read and revised by the proofreaders; goes back to the author for his revision; is re-read by the editors three or more times, at different stages; and again by the proofreaders possibly half a dozen times additional. Thus each article is read at least fifteen and often twenty times after leaving the author's hands until it reaches the public eye. But with all this unremitting vigilance errors of the most obvious kind occasionally escape observation until perhaps the final reading, but it is rare, indeed, that an inaccuracy hides itself in the pages securely enough to go through a magazine's edition.

The Game Law.

Just before sine die adjournment the senate, by a vote of 23 to 1 passed the house game and fish bill. The bill has been urged by many sportsmen of Missouri, who recognize the under existing conditions all game is being needlessly slaughtered. Under the provisions of the measure it is unlawful to kill deer between January 1 and October 1; quail or similar birds, between November 1 and Jacuary 1; doves, from January 1 to August 1; wild ducks, from April 1 to October 1. For a period of five years it is unlawful to sell or buy any wild deer, quail or wild turkey. The section prohibits shipment of game from one county to another through shipment from other states is unrestricted. Seining of fish is also prohibited. Violation of this provision is punishable by fine of from $25 to $100 for each offense.—Ex.

Sedalia Daily Capital: Rev. Fitzgerald, a Warrensburg minister, last week received the following letter through the mail, and answered it in his Sunday evening sermon: "Dear sir and brother, not long since I read in the criminal column of a daily paper where three negro boys were arrested for 'shooting craps.' It was shown that 50c changed hands and they were given 30 days in jail. Was this gambling? In the society columns of the same daily was given an account of where six ladies met in a parlor game of whist, where a silver set, valued at $25, changed hands. Was this gambling? Please explain the ratio Sunday night." The reverned gentlemen had figured the matter out to his own satisfaction, and told his congregation that the ladies should have served an aggregate of 1,272 days in jail with the negroes in order to carry out the letter and spirit of the law.

Col. Seay's Letter.

Kinlfisher, Okla., March 21, 1901.

Jesse B. McQuie:

Dear Comrade: I cannot recall how you look, but the facts you state assure me you are no fraud.

Your very kind and good letter is flattering to me—that the old boys after so many years should give expressions to my worth as a soldier, not only gratifies but carries me back to the marches, hardships and battles, which we did, and suffered over a generation ago "for the love of our country and its flag." Read the clippings I send, take warning, and keep your $20. Watch the papers and save all the information you get, when you want a home you will have your $20 to buy a ticket and come out and look after it personally. Love to the boys. Truly yours,

A. J. SEAY,
Late Col. 32d Mo. Vol. Infantry.